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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

GREG MAYON et al., Plaintiffs and Appellants, v. CITY AND COUNTY OF SAN FRANCISCO, Defendant and Respondent.	A122996 (San Francisco City and County Super. Ct. No. 466375)

Plaintiffs Greg and Ramona Mayon (appellants) brought this civil rights action against respondent City and County of San Francisco (the City) after the school bus in which they were living was towed. They appeal from a judgment on a jury verdict in favor of the City. We dismiss the appeal, as appellants' failure to provide an adequate record precludes review.

FACTUAL AND PROCEDURAL BACKGROUND

In August 2006, a school bus that appellants claim they owned and considered their home (the bus) was towed by the City. (See former S.F. Traffic Code, § 37, subd. (a) [no vehicle shall be parked or left standing on any street for more than 72 hours].) Appellants filed a civil rights action against the City, alleging that this amounted to an illegal seizure under the Fourth Amendment to the United States Constitution. In July 2008, after a trial at which appellants appeared in propria persona, the jury returned a verdict in favor of the City, concluding that the City had not interfered or attempted to interfere by a threat, intimidation, or coercion with the exercise or enjoyment of

appellants' constitutional rights. (See Civ. Code, § 52.1.) On July 30, 2008, the trial court entered judgment on the verdict, ordering that appellants take nothing from the City. Appellants filed a timely notice of appeal from the judgment.

DISCUSSION

On appeal, appellants challenge the sufficiency of the evidence to support the judgment, as well as two of the trial court's evidentiary rulings. Their opening brief does not include a single citation to the record, however, and relies almost entirely on facts outside the record, in violation of the California Rules of Court. (See Cal. Rules of Court, rules 8.204(a)(1)(C) [briefs must "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears"] & 8.204(a)(2)(C) [appellant's opening brief must "[p]rovide a summary of the significant facts limited to matters in the record"].) An appellant's failure to comply with the rules of court may, in our discretion, result in dismissal. (See *Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 768.)

We conclude that such disposition is appropriate and, indeed, necessary in this case, as appellants' failure to provide record support for their assertions is a symptom of a more fundamental defect: the absence of a record that establishes the basic facts and procedural underpinnings of their appeal. Appellants elected to proceed without a transcript of the oral proceedings and designated a record consisting of a 32-page clerk's transcript that contains only the documents required by California Rules of Court, rule 8.122(b). (See *id.* [notice of appeal, judgment, notice of entry, notices to prepare clerk's transcript, and register of actions].) The record on appeal does not include the pleadings, does not reflect the trial court proceedings and evidentiary rulings, and does not contain any evidence.

This record not only fails to satisfy appellants' burden to demonstrate error; it precludes review of the error they assert.[1] (See *Estate of Fain* (1999) 75 Cal.App.4th

[1] On appeal, we presume the judgment to be correct and indulge all intendments and presumptions to support it regarding matters as to which the record is silent. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; accord *Gee v. American Realty &*

973, 992 [appellant who attacks a judgment but supplies no reporter's transcript is precluded from challenging sufficiency of the evidence]; *In re Angel L.* (2008) 159 Cal.App.4th 1127, 1136-1137 [court presumes evidence supports judgment when record of pertinent oral proceedings is not provided].) This deficiency is not remedied by resort to the testimony and facts to which appellants refer without record citation or the 20 pages of exhibits they attach to their opening brief. We may not consider facts not found in the record. (*Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 845, fn. 6; see *Protect Our Water v. County of Merced* (2003) 110 Cal.App.4th 362, 364 ["if it is not in the record, it did not happen . . ."].) Moreover, although a party may attach to its brief up to 10 pages of "copies of exhibits or other materials *in the appellate record*," appellants' attachments are not part of the record. (See Cal. Rules of Court, rule 8.204(d), italics added.)

Inadequacy of the record warrants dismissal of an appeal. (*In re Marriage of Wilcox* (2004) 124 Cal.App.4th 492, 498; *Ehman v. Moore* (1963) 221 Cal.App.2d 460, 463 ["Where the appellant fails to provide the reviewing court with a record enabling it to review and correct alleged errors, the appeal will be dismissed"]; accord *Webman v. Little Co. of Mary Hospital* (1995) 39 Cal.App.4th 592, 595.) We are aware that appellants bring this appeal without the benefit of legal representation, but their status as pro. per. litigants does not exempt them from the rules of appellate procedure or relieve them of their burden on appeal. (See *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.) We treat pro. per. litigants like any other party, affording them " 'the same, but no greater consideration than other litigants and attorneys.' " (*Ibid.*)

We note, as a final matter, that appellants have requested oral argument, pursuant to a notice sent by the clerk, as a matter of course, when the appeal was fully briefed. In light of our disposition dismissing the appeal on procedural grounds, appellants have no

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Construction, Inc. (2002) 99 Cal.App.4th 1412, 1416.) Appellants bear the burden of overcoming the presumption of correctness by providing an adequate record that affirmatively demonstrates error. (See *Defend Bayview Hunters Point Com. v. City and County of San Francisco* (2008) 167 Cal.App.4th 846, 859-860.)

right to oral argument, and it would serve no purpose in this case, as it is limited to matters supported by the record. (See *Moles v. Regents of University of California* (1982) 32 Cal.3d 867, 871 [right to argue a cause orally before the reviewing court exists in any appeal that is considered *on the merits* and decided by a written opinion].)

DISPOSITION

The appeal is dismissed, with costs to the City.

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McGuiness, P.J.

We concur:

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Pollak, J.

_____
Siggins, J.